

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA

In re:

LOCAL RULES

ORDER AMENDING LOCAL RULES

The Local Rules Committee for the Eastern District of North Carolina has recommended that the Local Rules be amended. On December 13, 2001, the amendments were posted on the court's web page with comments by January 15, 2002. The bankruptcy judges considered all of the comments, and pursuant to Rule 9029 of the Federal Rules of Bankruptcy Procedure and pursuant to the authority granted by the order of the United States District Court for the Eastern District of North Carolina dated October 8, 1987, the Local Rules for the Eastern District of North Carolina are amended as follows:

Local Rule 5005-4 shall be read in conjunction with the Administrative Guide for Electronic Filing. The guide is available from the Office of Clerk of the United States Bankruptcy Court for the Eastern District of North Carolina and is maintained on the court's web site at: www.nceb.uscourts.gov. In the event of a conflict between the Local Rules and the Administrative Guide, the Local Rules shall control.

Rule 5005-4(1) ASSIGNMENT TO SYSTEM AND FILING REQUIREMENTS

- (a) ASSIGNMENT: All opened cases are assigned to the Electronic Case Filing System ("ECF System").
- (b) FILING: All petitions, motions, memoranda of law, and other pleadings or documents required to be filed with the court in connection with the case must be electronically filed except as provided in these rules or in exceptional circumstances preventing a Filing User from filing electronically.
- (c) EXCEPTION TO FILING REQUIREMENT: Notwithstanding the foregoing, attorneys and others who are not Filing Users as defined by Local Rule 5005-4(2) are not required to electronically file pleadings and other documents in cases assigned to the ECF System.

Rule 5005-4(2) ELIGIBILITY, REGISTRATION AND PASSWORDS

- (a) ELIGIBILITY AND REGISTRATION: Attorneys admitted to the bar of this court (including those admitted pro hac vice), bankruptcy administrators and their assistants, private trustees, and others as the court deems appropriate, may register as Filing Users of the court's Electronic Case Filing System. Registration is in the form prescribed by and available from the clerk. The registration form also is contained in the Administrative Guide to Electronic Filing maintained by the clerk and published on the court's web site.
- (b) NON-REPRESENTED PARTIES: If the court permits, a party to a pending action who is not represented by an attorney may register as a Filing User in the ECF System solely for purposes of that action. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User

effective upon the attorney's appearance in the case.

(c) **ELECTRONIC NOTICE AND SERVICE; WAIVERS:** As to all documents properly filed and served electronically, registration as a Filing User constitutes (1) a waiver of the right to receive notice or service by first class mail or personal delivery; and (2) consent to electronic service pursuant to Local Rule 5004-4(9), except with regard to service of a summons and complaint under Rule 7004 of the Federal Rules of Bankruptcy Procedure and any other applicable rule or statute pursuant to which service by mail is not permitted. Waiver and consent pursuant to subsections (c)(1) and (2) applies to notice of the entry of an order or judgment under Rule 9022 of the Federal Rules of Bankruptcy Procedure.

(d) **PASSWORDS:** Once registration is completed, the Filing User will receive notification of the Filing User log-in and password. Filing Users agree to protect the security of their log-in information and passwords and to immediately notify the clerk if they learn that their log-in information or password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

Rule 5005-4(3) CONSEQUENCES OF ELECTRONIC FILING; DEADLINES

(a) **FILING:** Electronic transmission of a document to the Electronic Case Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the clerk, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Rule 5003 of the Federal Rules of Bankruptcy Procedure.

(b) **OFFICIAL RECORD:** When a document has been filed electronically, the official record is the electronic recording of the document as stored by the clerk, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing.

(c) **DEADLINES UNCHANGED BY ELECTRONIC FILING:** Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before 12:00 midnight, Eastern Time, in order to be considered timely filed that day.

Rule 5005-4(4) ENTRY OF COURT ORDERS

(a) **FILING OF COURT ORDERS; EFFECT OF ELECTRONIC FILING ON COURT ORDERS:** All orders, decrees, judgments and proceedings of the court will be filed in accordance with these rules, which will constitute entry on the docket kept by the clerk under Rules 5003 and 9021 of the Federal Rules of Bankruptcy Procedure. All orders or other documents generated by the court and filed electronically, without the signature of a judge, shall have the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket in a conventional manner.

(b) **SUBMISSION OF DOCUMENTS FOR JUDGE'S SIGNATURE:** Any document submitted for a judge's signature in a case assigned to the ECF System must be submitted electronically, to the clerk's office, in the format specified by the Administrative Guide.

Rule 5005-4(5) FORMAT; ATTACHMENTS AND EXHIBITS

(a) All documents filed electronically within the ECF System are subject to the same rules

pertaining to format as documents filed in paper form, including but not limited to Local Rule 5005-3.

(b) Filing Users must submit, in electronic form, all documents referenced as exhibits or attachments as provided in Local Rule 5005-1(d), unless the court permits conventional filing.

Rule 5005-4(6) SEALED DOCUMENTS

Documents ordered to be placed under seal must be filed conventionally, and not electronically, unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. A court order authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of any order authorizing the filing of documents under seal must be attached to the documents and delivered to the clerk.

Rule 5005-4(7) ORIGINAL SIGNATURES AND RETENTION REQUIREMENTS

Electronically filed documents that require original signatures from any person other than the Filing User must be maintained by the Filing User in paper form, bearing the original signatures, for four years after the closing of the case or proceeding in which the documents were filed. Upon the court's request, the Filing User must provide the original signed documents for review.

Rule 5005-4(8) SIGNATURES AND CERTIFICATION

(a) ELECTRONIC FILING CONSTITUTES SIGNATURE AND CERTIFICATION: The use of the log-in and password of the Filing User to electronically file any petition, pleading, motion, claim, or other document shall constitute the signature of that Filing User on the electronically filed document for purposes of the Federal Rules of Bankruptcy Procedure, including Rule 9011, the Local Rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court. Use of the log-in and password also shall constitute certification by the Filing User, and by any agent authorized by the Filing User to use the log-in and password, that: (1) all persons indicated to have signed the document have actually executed the original prior to electronic filing; and (2) the Filing User has authorized the electronic filing of the executed document.

(b) USE OF LOGIN/PASSWORD: No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an agent of the Filing User authorized to use such login and password.

(c) FORM OF ELECTRONIC SIGNATURE: Electronically filed documents requiring a signature shall either: (1) show an image of such signature as it appears on the original document or appended as an image file, in which case such document shall indicate that it has been filed electronically, or (2) bear the name of the signatory preceded by an "s/" typed in the space where the signature would otherwise appear, as follows: s/ Jane D. Doe.

(d) IMAGED SIGNATURES: An electronic image of signatures shall be required as an attachment of the filed document for all documents executed under oath or under penalty of perjury; however, bankruptcy petitions, schedules, statements of financial affairs, exemptions, and creditor matrix verifications shall be accompanied by an imaged signature page in the form prescribed by the Administrative Guide. The signatures on imaged attachments shall have the same legal effect as the original signatures.

**Rule 5005-4(9) SERVICE OF DOCUMENTS BY ELECTRONIC OR
CONVENTIONAL MEANS; CALCULATION OF RESPONSE TIME**

(a) NOTICE OF ELECTRONIC FILING TO FILING USERS: A Filing User who electronically files a pleading or other document in a case assigned to the ECF System may transmit or cause to be transmitted a "Notice of Electronic Filing" to other Filing Users entitled to notice or service of the document under the Federal Rules of Bankruptcy Procedure or the Local Rules.

(b) TRANSMISSION OF NOTICE OF ELECTRONIC FILING: The Notice of Electronic Filing may be transmitted by e-mail, hand, facsimile, or by the U.S. Mail, first-class postage prepaid. Transmission of the Notice of Electronic Filing to Filing Users constitutes service or notice of the filed document on Filing Users.

(c) CONVENTIONAL SERVICE OF DOCUMENTS AND NOTICE TO NON-CONSENTING PARTIES: Parties who have not consented to electronic service of documents or notice must be served with a paper copy of any electronically filed pleading or other document.

(d) CALCULATION OF RESPONSE TIME: Rule 9006(f) of the Federal Rules of Bankruptcy Procedure shall apply to the calculation of deadlines for responses to electronically filed pleadings and other documents.

Rule 5005-4(10) NOTICE AND SERVICE OF COURT ORDERS

(a) NOTICE AND SERVICE TO FILING USERS: Immediately upon the entry of an order, judgment, decree or other document generated by the court in an action assigned to the ECF System, the clerk will electronically transmit a Notice of Electronic Filing to all Filing Users in the case. Electronic Transmission of the Notice of Electronic Filing constitutes the notice required by Rule 9022 of the Federal Rules of Bankruptcy Procedure, and constitutes service of the document to Filing Users.

(b) NOTICE AND SERVICE TO NON-CONSENTING PARTIES: The clerk must give conventional notice and service of documents in accordance with the Federal Rules of Bankruptcy Procedure to any person who has not consented to electronic service.

Rule 5005-4(11) TECHNICAL FAILURES

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

Rule 5005-4(12) LIMITATION ON PUBLIC ACCESS

(a) In connection with the filing of any material in an action assigned to the ECF System, any person may apply by motion for an order prohibiting the electronic filing of or limiting the electronic access to certain specifically-identified material on the ground that the material is subject to privacy interests, and that electronic filing of the action or electronic access to the filed material is likely to prejudice those privacy interests.

(b) Material filed on the ECF System shall not be accessed or downloaded for any purpose inconsistent with the privacy concerns of any person.

OTHER RULES REVISIONS RELATING TO ELECTRONIC FILING

Rule 5005-1 FILING AND TRANSMITTAL OF PAPERS

(d) EXHIBITS OR ATTACHMENTS CONTAINING EXCERPTED MATERIAL: Any

exhibit or attachment to any document or paper filed under these rules may contain only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. A party filing excerpts of documents as exhibits or attachments under this rule may supplement the excerpt without prejudice to timely file additional excerpts or the complete document. Responding parties likewise may timely file excerpts or the complete document to the extent that the excerpts or document are directly germane to the matter under consideration. Upon request by any party in interest or the court, the complete document containing any such excerpt shall be made available to both the party making the request and the court, unless otherwise ordered by the court.

Rule 9036-1 NOTICE BY ELECTRONIC TRANSMISSION

(a) Whenever the clerk, or some other person as directed by the court, is required to send notice by mail and the entity or person entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission.

(b) Notice by electronic transmission is complete, and the sender shall have fully complied with the requirement to send notice, when the sender obtains electronic confirmation that the transmission has been received, except where the recipient of the notice has agreed in writing that confirmation is not required, in which case notice is complete upon transmission.

SO ORDERED.

February 20, 2002

s/ J. Rich Leonard

J. Rich Leonard
Chief Judge

s/ A. Thomas Small

A. Thomas Small
Judge